

9. The Basin Plan designates beneficial uses of inland surface waters in the discharge area (hydrologic sub area 906.20) as including Agricultural Supply (AGR), Contact Water Recreation (REC 1), Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
10. The Regional Board's Assistant Executive Officer issued CAO No. R9-2008-0074 on July 9, 2008. The CAO was issued in response to a complaint from the City of Poway and a Regional Board inspection on June 9, 2008. The CAO required Dr. Moritz to immediately stabilize the site with erosion and sediment controls, remove the unauthorized fill and drainage pipe, and restore the stream to pre-project conditions.
11. On August 7, 2008 Dr. Moritz filed a petition with the State Water Resources Control Board (State Board) to review the issuance of CAO R9-2008-0074, and to stay enforcement of the order. On October 13, 2008, the State Board concluded that the petition failed to raise substantial issues for their review and dismissed the petition and denied the request for a stay on enforcement of the CAO.
12. In accordance with Directives 1 and 3 of the original CAO, Dr. Moritz began implementing interim sediment controls to stabilize the site and developed a stream restoration plan. The Stream Restoration Plan was submitted to the Regional Board on September 24, 2008, and contained a proposed timeline to comply with all directives of the CAO.
 - a. In response to the submittal of the Stream Restoration Plan and the proposed timeline for compliance with the directives of the original CAO, on October 1, 2008 the Regional Board issued Addendum No. 1 to CAO R9-2008-0074. The Addendum revised the compliance dates to coincide with the proposed timeline of the Stream Restoration Plan.
 - b. Implementation of the Stream Restoration Plan required that Dr. Moritz apply to the City of Poway for a grading permit to remove all material discharged into waters of the State, and apply to the California Department of Fish & Game (CDF&G) for a Section 1602 Streambed Alteration Agreement (SAA). To date, Dr. Moritz has not applied for a grading permit and his application for a SAA is pending.
13. To allow Dr. Moritz the opportunity to receive an evidentiary hearing on the issue before the Regional Board, on October 30, 2008, the Regional Board Assistant Executive Officer rescinded CAO R9-2008-0074.

14. Cleanup and abatement of the Site is necessary to ensure that discharges from the unauthorized discharge of waste cease to cause and/or threaten to cause conditions of pollution and to restore beneficial uses of water. Because cleanup and abatement activity will occur within the stream, best management practices (erosion and sediment controls) are necessary to prevent and reduce erosion from the Site and exacerbate the conditions that threaten beneficial uses of the water.
15. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
16. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

IT IS HEREBY ORDERED that, pursuant to Section 13304 of Division 7 of the California Water Code, Dr. Moritz shall:

1. Immediately, under the guidance of a qualified civil engineer or environmental consultant, continue the implementation and maintenance of interim site stabilization measures (sediment and erosion control best management practices) to prevent the discharge of waste off-site.
2. By **March 20, 2009** apply for and obtain all necessary permits and authorizations required to implement the September 18, 2008 *Amended Stream Restoration Plan for Moritz Property* (prepared by Geosyntec Consultants).
3. By **April 24, 2009** cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste on your property by:
 - a. Removing the waste including sand, silt, clay, rock or other earthen materials previously discharged to waters of the State;
 - b. Restoring the elevations of the stream channel bottom and banks and floodplain to pre-discharge conditions;
 - c. Realigning the stream channel to its pre-discharge location;
 - d. Revegetating the restored stream with native vegetation along the banks in a manner to mimic the diversity and distribution of streams in the vicinity of the affected area;
 - e. Removing the 24-inch HDPE drainage pipe and other associated structures; and
 - f. Removing the waste including sand, silt, clay, rock or other materials stored on land where it threatens to discharge to waters of the State.

4. All waste materials including sand, silt, clay, rock or other earthen materials that are removed from the Site (14272 Jerome Drive) shall be disposed of properly at facilities permitted to accept such waste in accordance with all relevant federal, state, and local laws, regulations, orders, resolutions, and ordinances.
5. By **May 29, 2009**, submit a Cleanup and Abatement Report that clearly documents that the required on-site cleanup and abatement actions have been taken and that the stream has been returned to pre-project conditions. The report shall include an estimation of the volume and aerial extent of the discharge and photographs of the remedial activities and completed cleanup conditions.

Reporting Requirements

1. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger(s) or by a duly authorized representative of the Discharger(s) and submitted to the Regional Board. *Duly Authorized Representative.* A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.).
2. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
3. **Electronic and Paper Media Reporting Requirements.** The Discharger shall submit both electronic and paper copies of all work plans, technical reports, and monitoring reports required under this Cleanup and Abatement Order. Electronic submission shall be in PDF format, and include the signed transmittal letter and professional certification.
4. **Report Submittals.** All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Assistant Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Central Watershed Unit

NOTIFICATIONS

1. **Enforcement Actions.** The Regional Board reserves its right to take any enforcement action authorized by law.
2. **Applicability.** Requirements established pursuant to Water Code Sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the Regional Board.

In accordance with Water Code section 13267(b) these findings provide the Dr. Bill Moritz with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports.


3. **Potential Liability.** Pursuant to California Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.

Pursuant to California Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by Section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

4. **Cost Reimbursement.** The Discharger shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the State Water Resources Control Board.

5. **Waste Management.** The Discharger shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in California Water Code section 13050(m). The Discharger shall, obtain, or apply for coverage under waste discharge requirements or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.
6. **Duty to Use Qualified Professionals.** The Discharger(s) shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Discharger(s) shall include a statement of qualifications and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of a Cleanup and Abatement Order adopted by the California Regional Water Quality Control Board, San Diego Region, on February 11, 2009.



JOHN H. ROBERTUS
Executive Officer

17 FEB 2009
Date

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Attorneys for alleged Dischargers, William and Lori Moritz

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
FOR THE SAN DIEGO REGION**

IN THE MATTER OF:)	
)	WILLIAM AND LORI MORITZ'S
THE CALIFORNIA REGIONAL WATER)	ARGUMENT, EVIDENCE, AND EXHIBITS
QUALITY CONTROL BOARD, SAN DIEGO)	FOR CONSIDERATION BY RWQCB AS TO
REGION, AS TO TENTATIVE CLEANUP AND))	CAO R9-2008-0152
ABATEMENT ORDER R9-2008-0152,)	
)	
v.)	Date of RWQCB Hearing: February 11, 2009
)	
WILLIAM MORITZ, and LORI MORITZ)	
)	

William ("Bill") Moritz and Lori Moritz submit the following Argument, Evidence, and Exhibits for Consideration by the California Regional Water Quality Control Board for the San Diego Region (hereinafter "RWQCB") as to tentative Cleanup and Abatement Order ("CAO") R9-2008-0152.

REQUESTED RELIEF

1. The Moritzes request the following relief:
2. That RWQCB not issue tentative CAO R9-2008-0152;
3. In the alternative, that the RWQCB defer consideration to a future meeting to occur no earlier than late summer 2009;
4. In the further alternative, that RWQCB order a temporary waiver of discharge requirements;

1 5. In the further alternative, that RWQCB allow more time for achieving compliance, with dates of
2 no earlier than the end of summer 2009;

3 6. That the RWQCB add other dischargers including without limitation the City of Poway to the
4 CAO R9-2008-0152, or otherwise require the City of Poway to manage storm water flow to
5 prevent siltation, sediment, and scouring that occurs from unrestrained high-velocity storm-
6 waters entering upgradient onto the Moritz property during high-volume storm events.

7 **FACTUAL BACKGROUND**

8 Bill Moritz and his family moved into his single-family residence property at the end of Jerome
9 Drive in Poway in May 2007. The home is in an area toward the outskirts of the City of Poway. The
10 property approaches three acres in size and, like other properties in the area, has horses.

11 Bill Moritz is a Ph.D. working with divorced parents sharing custody of their children. He has
12 no prior background or experience in hydrogeology or in storm-water management.

13 The Moritz property has a shallow depression running through it, a shallow ditch that the
14 Regional Board staff characterizes as a “vegetated ephemeral drainage.” This ephemeral drainage
15 channel bisects Bill Moritz’s property in a north-to-southwesterly direction, transiting approximately
16 330 feet as it crosses from one side of the property to the other.

17 In October 2007, San Diego suffered significant fire damage in general and Bill Moritz's
18 neighborhood was particularly affected, damage that burned brush and left denuded slopes. The area
19 suffered similar damage in the October 2003 fires. In October 2007, Bill Moritz was one of few people
20 who stayed in the neighborhood to fight the Witch Creek Fire after others had evacuated their homes.
21 The City of Poway Fire Department arrived to assist Bill Moritz and others in their attempts to put down
22 the fires, but expressed disappointment and was unable to cross Bill Moritz’s property to reach Crocker
23 Road at approximately 5:45 a.m. — the ephemeral stream had been scoured by rains leaving an
24 impassable ditch. One of the firemen who had been on site during the Witch Creek fires had left a City
25 of Poway pager on the property after having spent the night recuperating on the Moritz property. Bill
26 Moritz later returned the pager to the Poway Fire Department. Exhibit 1 is photos from the Witch Creek
27 fires.

1 There were significant rain events in the fall and winter of 2007. The rain events caused scours
2 on the Moritz property, as well as the depositing of silt and sediment on the Moritz property. In one
3 storm event, silt-and-sediment laden storm water overtopped a 14 inch culvert located upgradient of the
4 Moritz property, ran unabated across the road, and ultimately down onto the Moritzes' property. The
5 upgradient property had had no grading-violation enforcement by the City of Poway, and there was no
6 erosion-controlling vegetation to hold sediment.

7 After the fires and shortly after a rain event, a dam created by the use of sand bags a few hundred
8 yards upstream on a property of currently-unknown ownership broke, sending a flood of water down the
9 ephemeral stream, nearly flooding Bill Moritz's home, and further scouring the property.

10 Given concerns about the effects of the storms, Governor Schwarzenegger declared a state of
11 emergency to exist on October 26, 2007.¹ He made an order unconditionally suspending statutes,
12 regulations, and rules related to fire debris, restoration work and for fire-related activities:

13 Statutes, rules, regulations and requirements are hereby suspended to the extent they
14 apply to the following activities: (a) removal, storage, transportation and disposal of hazardous
15 and non-hazardous debris resulting from the disaster, (b) necessary restoration, and (c) related
16 activities. Such statutes, rules, regulations and requirements are suspended only to the extent
17 necessary for expediting the removal and cleanup of debris from the disaster, and for
18 implementing any restoration plan. (Exhibit 2.)

19 Thereafter, RWQCB placed conditions on the governor's unconditional waiver. RWQCB issued
20 order R9-227-0211, placing 21 conditions on dischargers requesting the conditional waiver of statutory
21 requirements. (Exhibit 3).

22 Bill Moritz sought authority from the City of Poway to repair damage to his property by using a
23 small farm tractor to perform contour grading. He went to the City of Poway on November 7, 2007 and
24 spoke to a City employee, believed to be Samuel Azabada, about the work he envisioned. The City of
25 Poway official told Bill Moritz that no permit was necessary because he was performing contour
26

27 _____
28 ¹ The President of the United States also declared that conditions in the affected counties constituted a major disaster.

1 grading, which falls within that exception to the grading-permit requirement in the Poway Municipal
2 Code.

3 Having sought and obtained permission to perform contour grading, Bill Moritz went forward
4 with the contour grading work on his property. Bill Moritz's neighbor to the south assisted with some of
5 the work. Bill Moritz's neighbor to the north performed similar work on his property, as he had done
6 before.

7 In January 2008, City of Poway inspector Dave Rizzuto showed up at the Moritz property, and
8 entered the Moritz property without any inspection warrant. He observed Bill Moritz moving soils
9 about the property. He saw a single stockpile, which apparently had been dumped by truck. The soil
10 did not smell or otherwise have any deleterious characteristics; it appeared to be clean soil.

11 The City of Poway inspector, Dave Rizzuto, said that the work Bill Moritz was performing
12 needed no permit. So Bill Moritz continued with the work.

13 On February 7, 2008, City inspector Donald Sharp showed up and entered onto the Moritz
14 property, without any inspection warrant. He issued a stop-work order, noting that Bill Moritz was
15 "importing fill w/out haul Rt. permit." (Exhibit 4). The stop-work notice said "contact Sam Tadros @
16 City of Poway — 668-4661 ASAP."

17 Bill Moritz went inside his home and called Sam Tadros, and set a meeting at 8:00 a.m. on
18 February 8, 2008. Bill Moritz met upstairs with Sam Tadros at City Hall and then spoke downstairs
19 with a City employee named Scott. Sam Tadros has no memory of the meeting, but noted that he was
20 working 18-hour days at that point, and was much overburdened. (Exhibit 5 at pages 13-14.) City of
21 Poway personnel advised Bill Moritz that he needed no haul permit because he was performing contour
22 grading for which grading permits were not required and consequently no grading-permit number was
23 issued. The haul permits that the City of Poway issues, City officials advised, connect to grading
24 permits by number. Without a grading permit, no haul permit can issue. He was advised that so long as
25 he is doing only contour grading, he could continue with the work. Bill Moritz continued working at the
26 site.

1 Don Sharp showed up in the afternoon of February 8, 2008. He issued a second stop-work
2 notice, indicating that grading in an ephemeral stream is not allowed. (Exhibit 6.) Bill Moritz was told
3 to contact Jim Lyon at the City of Poway.

4 Bill Moritz contacted Jim Lyon, and invited him to the site. Jim Lyon confirmed on February
5 14, 2008 that contour grading and the stone creek concept were okay. (Exhibit 7 at pages 32-33.) Bill
6 Moritz continued work outside of the ephemeral stream.

7 On March 17, 2008, St. Patrick's Day, City of Poway employee, Donald Sharp, showed up at the
8 Moritz property visibly intoxicated, yelling, and slurring his words. He threatened Bill Moritz with fines
9 of thousands of dollars per day. He called Bill Moritz a liar and told him: "You're going to jail buddy,
10 you're going to jail, heh, heh, heh."

11 Thereafter, on March 20, 2008 Bill Moritz met at the City of Poway with Donald Sharp and Jim
12 Lyon for less than 10 minutes. The City asked Bill Moritz to place BMPs at the toe of the fill (the south
13 side of the property), which he did. The City asked, for the first time, that Bill Moritz reestablish the
14 stream per the topography photographs from 2005, two years before the Moritzes moved into the
15 property. The City asked Bill Moritz to stop grading, which he did, and to meet with Danis Bechter,
16 which he did.

17 On March 21, 2008, Bill Moritz called Danis Bechter via speakerphone. Bill Moritz told Danis
18 Bechter that he was planning a "stone creek," a creek essentially following the pre-existing topography
19 but lined with cobbles to help prevent scours in storm-water events. Danis Bechter told Bill Moritz to
20 provide a sketch of what he had in mind for the creek. He said to the effect: "Bring in a sketch to me so
21 we can put this matter to bed." Bill Moritz advised that his daughter was an artist, and would prepare a
22 sketch of the stone-creek design.

23 Bill Moritz submitted a sketch of the stone-creek design on April 2, 2008. The stone-creek
24 design drawings appear to be an elevation watercolor together with a concept drawing. See Exhibit 8.
25 Bill Moritz had no reason to believe that the sketch and concept drawing were in any way deficient.

26 Thereafter, over the course of the next several weeks, having not heard back from the City of
27 Poway regarding the already-submitted sketch of the stone-creek design, Bill Moritz met with a Cal
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1 Trans Engineer and, subsequently, with other engineers. Some of these gentlemen raised the issue of
2 whether the stone-creek design actually would work and be protective of the Moritz property. He
3 learned that HDPE double-walled, smooth-lined pipe combined with siltation basins at either end would
4 provide the best storm water, silt and debris management solution, albeit the most expensive way of
5 preventing scours and sediment transport that he had experienced on his property. He also learned that
6 the pipe was sufficiently strong that it could be driven across, so that he could have a fire road on the
7 perimeter of his property.

8 Still having never heard back from the City of Poway regarding the stone-creek sketch, but
9 having spoken with civil engineers concerning a culvert, Bill Moritz filled out and submitted a
10 Department of Fish & Game (CDFG) a Notification of Lake or Streambed Alteration on May 14, 2008,
11 paying a \$200 fee. (Exhibit 9.) City of Poway officials had already lodged a complaint against Bill
12 Moritz with the Department of Fish & Game. Bill Moritz understood that filing the notification form, as
13 with fishing permits, was both the necessary and final step in the process of obtaining approval for the
14 streambed alteration. This was confirmed, he believed, when he asked Kelly Fisher of the Department
15 of Fish & Game whether there was anything else to do, and she responded "that's it."

16 The Notification of Lake or Streambed Alteration describes the installation of a twenty-four inch
17 (24") dual wall HDPE pipe for a length of approximately three-hundred and forty feet (340'), to the
18 south side of the property, exiting within the general location of the drainage channel. (Exhibit 9 at page
19 62.13.)

20 Similar culvert drainage structures exist in the area. See Exhibit 10. Upgradient of the property
21 approximately 100 yards to the northeast is a 14" thin-walled galvanized pipe passing beneath under
22 Crocker Road. Downgradient of the property, but after another intersecting tributary, is a 30" thin-
23 walled galvanized pipe passing beneath Golden Sunset Lane. Bill Moritz reasoned that his pipe was a
24 properly sized pipe given the upstream and downstream pipe sizing.

25 Shortly before Memorial Day weekend, Bill Moritz received a letter "NOTICE OF
26 VIOLATION" from the City of Poway dated May 19, 2008 — five days after Bill Moritz had submitted
27 the streambed notification to the Department of Fish & Game. Citing two municipal code sections, the
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1 notice of violation stated (1) that material had been deposited in a watercourse that might impede the
2 flow of water, and (2) that the capacity of the watercourse had been reduced. The notice demanded:
3 **"Please correct the above violations by June 2, 2008."** (Exhibit 11.)

4 In light of his Notification of Lake or Streambed Alteration filed five days before, he understood
5 this to be the City's demand to complete that work, and to complete that work immediately. He wrote to
6 the City of Poway in a letter dated May 21, 2008 advising that since he had not heard back from the City
7 of Poway concerning the stone creek design as submitted to Poway City Hall per Danis Bechter's
8 request, and that he had contacted the state Department of Fish & Game. (Exhibit 12.) He then
9 canceled his Memorial-Day-weekend travel plans to be with family out of state, purchased materials
10 including sand and pipe, called on a number of friends for some assistance, then installed the pipe uphill
11 and east of the natural drainage course.

12 Prior to construction of the silt basins, City of Poway employee Donald Sharp showed up and
13 issued another stop-work notice, criticizing the pipe installation and inappropriately threatening Bill
14 Moritz. Shortly thereafter, the Regional Board issued the cleanup and abatement order R9-2008-0074.

15 In an effort to begin compliance, the Moritzes retained the services of an environmental
16 geotechnical firm, Geosyntec, Inc., who prepared a stream restoration plan at the cost of over \$20,794.
17 (Exhibit 13). RWQCB staff accepted the plan.

18 To further comply with the original CAO, the Moritzes sought the assistance of a Civil engineer,
19 Don Ayles. Don Ayles estimated that civil engineering fees for grading plans to submit to the City
20 would cost approximately \$23,000, that City fees would be approximately \$12,000 plus a security
21 deposit, other consultants would be needed at a cost of approximately \$3200. (Exhibit 14.) These
22 \$38,200 estimated costs were exclusive of the cost of exporting soils. Reusing soils on site would
23 require additional engineering of approximately \$8000, but would reduce export costs that otherwise
24 might cost \$2000 or more depending on the volume. Thus, the civil engineering and soil expert costs —
25 exclusive of earthwork costs — would be between \$40,200 and \$46,200.